

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
ERIE RAILROAD COMPANY**

STATEMENT OF CLAIM.—

"Claim of M. M. Kohler for eight (8) hours pay at 82 cents per hour account of being deprived of one day's work on August 1, 1936, by L. H. Chess, who was a younger employee."

STATEMENT OF FACTS.—Messrs. Kohler and Chess worked in the signal gang of Foreman R. A. Thomas. The gang was laid off for one day on August 1, 1936, and Chess, who is junior to Kohler, was assigned to perform other work on that day. M. M. Kohler was promoted to the classification of signalman January 1, 1930, and Mr. Chess was promoted November 1, 1935.

There is in evidence an agreement between the parties bearing effective date of November 1, 1935. The following rules thereof have been cited:

"RULE 28. When force is reduced the senior man in a class on a seniority district capable of performing the work shall be retained. As much advance notice as possible will be given to employees laid off."

"RULE 43. Employees laid off on account of reduction in force must file with the proper officer their name and address, if they desire to retain their seniority. Employees who fail to keep the officer advised as to where they can be found, or who fail to return to service within ten (10) days after being notified, will lose their seniority rights.

"Employees laid off by reason of force reduction will be recalled to service in the order of their seniority. When filling temporary positions, if the senior laid-off employee fails to respond, or in case of an emergency, the senior available laid-off employee may be used until the senior laid-off employee reports."

POSITION OF EMPLOYEES.—Mr. Kohler being fully qualified to perform the work involved in this dispute and being senior to Mr. Chess should have been assigned to work on August 1, 1936. All of the seniority rules of the agreement and particularly Rules 28 and 43 support the contention of the employees.

POSITION OF CARRIER.—

"On Saturday, August 1, 1936, signal construction gang under the direction of Foreman R. A. Thomas, in accordance with the custom, was not assigned to work, but the Western Union Telegraph Company was changing a pole line near 'SC' Tower, Shenango, Pa., which required that we make a slight change in one of our line cables.

"Foreman Thomas, on September 30, 1936, when the signal gang had completed work, requested Signalman L. H. Chess to accompany him on Saturday, August 1, 1936, to take care of such Erie work that might be required.

"The arrangement under which signal construction gangs had been operated for some little time has been to assign the men so that they could earn approximately 22 days per month, and during the month of August the men in this construction gang did earn or exceeded this number of days.

"When this question was handled with the General Chairman representing the Signalmen, it was pointed out to him that there had been no viola-

tion of any rule in the Rules and Rates of Pay for Signal Department Employees, and that the claim was not justified. It was explained to him that there were several other Signalmen on the Mahoning Division roster who were older in service than Kohler, but that it was not generally the practice to work men on an entire division on a strict seniority basis, and that the rules of the agreement did not require this, but the General Chairman offered no further explanation in the matter.

"It is the position of the Erie Railroad that this claim by M. M. Kohler for one day's pay on August 1, 1936, is not sustained by the schedule rules and, therefore, not justified."

OPINION OF BOARD.—In support of this claim the employees quote Rules 28 and 43 of the agreement between the parties effective November 1, 1935.

The carrier contends that these rules do not apply to the instant claim as Rule 28 applies only when force is reduced and is not applicable because there was no reduction in force. The carrier further contends that Rule 43 requires that employees laid off as a result of action taken under Rule 28 are required to take certain action in order that they may qualify for return to service.

In the application of Rule 28 the Board submits that inasmuch as this carrier, because of an emergent economic or operating condition, had permitted the men in the signal gang to work only five days a week out of a normal period of six days per week, the fact is clearly indicated that the force was reduced to the extent outlined, and that the same rule that would apply to force reduction would equally apply when men are laid off.

As to the practice of applying seniority, or the seniority basis, and the requirements of the rules of the agreement, as presented in the carrier's statement, the Board further submits that the principle of applying seniority in service, which guarantees to senior employees the right of preference in employment when other conditions of fitness and ability are equal, is not only a matter of justice in the dealings between the carrier and employees but is as well an important factor in the shaping and ratification of the agreements between the parties.

So far as the reference is concerned to two other employees in the same gang holding seniority over Mr. Kohler, the statement is made that these men requested the foreman not to assign them on the day in question, and in the absence of testimony to the contrary the Board can only assume that the statement is correct and that by appointing a man junior to Mr. Kohler who was fitted by seniority and qualifications for the work in question, the Carrier violated the seniority rules of the existing agreement between the parties.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier violated the rules of the existing agreement between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 16th day of September, 1937.